

ANDOVER BOARD OF HEALTH
Minutes
September 13, 2010, 6:00 P.M.
1st Floor Conference Room
36 Bartlet Street

The Board of Health Meeting was called to order at 6:00 p.m. Present were Ms. Candace B. Martin, Chairman, Dr. Donald H. Miller, Vice-Chairman, Ms. Katherine Kellman, Clerk, and Mr. Thomas G. Carbone, Director of Public Health.

I. Approval of Minutes

- Regular Meeting of August 9, 2010

Motion by Ms. Martin seconded by Dr. Miller to approve the Minutes of the Meeting of August 9, 2010. Unanimous approval.

- Meeting of August 23, 2010

Motion by Ms. Martin, seconded by Ms. Kellman, to approve the Minutes of the Meeting of August 23, 2010. Dr. Miller abstained because he was not present at the August 23, 2010 meeting. Unanimous approval.

II. Appointments & Hearings

- **6:00 p.m. –David Kiu for Peking Garden – Show Cause Hearing (Continued) –**
Mr. Kiu was present at the Board of Health Meeting. Mr. Carbone stated that the last two monthly inspections were good and there were no critical violations noted. The Consultant, Ms. Lee, had spoken with Mr. Carbone and said that the improvements were due to Mr. Kiu's direct involvement with his staff. Mr. Kiu stated that there were definitely great changes in his staff's methods and behaviors. He cannot be there 24 hours a day; one time while he was gone, Ms. Lee observed his staff and her inspection was satisfactory. Mr. Kiu stated that when Ms. Lee does an inspection and finds things that need improvement, Mr. Kiu finds that his staff has been able to resolve the problems without him. Mr. Kiu stated that both he and his staff have taken Ms. Lee's advice seriously, have responded quickly to problems and have learned a lot from this process. His staff is working together and taking their responsibilities very seriously. Mr. Kiu spoke with Ms. Lee and they felt that the next step should be inspections every two months instead of monthly. She is willing to continue working with him until March of 2011, at which time she will then confer with Mr. Kiu on their progress. Dr. Miller stated that if Ms. Lee does her inspections every two months, he would like to require that the Board receive a copy of the inspection reports. Mr. Carbone stated that if there are six months of inspections with no critical violations, the Board could then decide if it wants to end the Show Cause Hearing.

Motion by Dr. Miller, seconded by Ms. Martin, to continue the Show Cause Hearing for six months, provided the Board is given copies of the Inspection Reports every two months. Unanimous approval.

III. Discussion

- **Training Component - Video – MAHB Public Hearing Training** – The video showed two separate meetings with different outcomes concerning the issue of Smoking Regulations in restaurants. One meeting showed the Board taking control and the other showed what can happen when a Board loses control. Rules of order should be established right away, there should be speaking limits for the audience members, the sound system should be clear, and the Board should not get drawn into the debate if things get heated.
- **Mosquito Test Results** - Mr. Carbone informed the Board that there were still no mosquitoes testing positive for disease in Andover. North Andover showed some positive results for West Nile Virus, but none in the last week or so. Methuen has had a positive result as well. Mosquitoes should become less active now that the cooler weather has started and in a couple of weeks the threat should be gone.
- **Flu Discussion (Not on Agenda)** – Dr. Miller asked if Mr. Carbone had any reports of flu yet. Mr. Carbone stated that he has not heard of any cases yet. Last year with the H1N1 virus expecting to be in full swing, we were pushing to get our seasonal flu shots out by mid October figuring we would be doing the H1N1 shots in November. We have a lot of doses left over from last year because the H1N1 flu wasn't as severe as expected.

IV. Old Business

- **Michael Way Housing Issue** – Thomas Urbelis, Town Counsel, Mr. Carbone, Ms. Odle's father and brother, and some of the neighbors were present at the Court Hearing on September 9, 2010. Ms. Odle asked for a delay from 9:00 a.m. to 10:30 a.m.; however, she did not appear. The judge asked Atty. Urbelis if the Health Division attempted to inspect her home; he replied that an attempt was made, but Ms. Odle did not give permission for anyone to enter her home. At the judge's request, the plaintiffs, Mr. Carbone and Atty. Urbelis spoke with Ms. Abrams of the court's Tenancy Preservation Program to see if she could help with the situation. The judge also upheld the original ORDER from September 2, 2008 for the inspection, and also indicated that he would approve of a Search Warrant request. A new court date has been set for Thursday, September 16, 2010, and by then an Administrative ORDER should have been exercised. Mr. Carbone told the Board that if Ms. Odle doesn't honor the ORDER, the court could make some decisions from there. Mr. Carbone faxed over the information on the application for the Search Warrant to Atty. Urbelis' office so he could review it.

On the advice of Town Counsel, Atty. Urbelis, Mr. Carbone asked the Board to vote to allow him to use his discretion to file for and exercise the Search Warrant.

Motion by Dr. Miller, seconded by Ms. Kellman to authorize Mr. Carbone to use his discretion to seek a Search Warrant and to authorize Mr. Carbone to execute the Search Warrant if issued. Vote taken: Ms. Martin, Aye, Dr. Miller, Aye, Ms. Kellman, Aye. Unanimous approval.

V. Definitive Subdivision Plans

- N/A

VI. Plan Review

A. D.W.R.P. Variances/Local Upgrade Approval (LUA)

- **208 Beacon Street – Allow SAS to be 14’ from Foundation, 20’ Required –** Mr. Carbone explained to the Board that the LUA will be in the front of the yard because a lot of the back yard is within the 100’ buffer zone to an adjacent wetland. Mr. Carbone recommended approval.¹

Motion by Ms. Martin, seconded by Dr. Miller to approve the LUA at 208 Beacon Street to allow the SAS to be 14’ from the foundation where 20’ is required. Unanimous approval.

VII. Staff Reports

A. Director’s Report:

- **Important Dates:**
 - September 13th @ 6 p.m. – Board of Health Meeting
 - October 27 to 29th, MHOA Conference
- **Mootone (Japanese) and Teatone (Chinese) Restaurants and Rat Infestation Problem and Health Code Violations (Not on Agenda)** – Mr. Carbone informed the Board that there is a very bad rat problem in the area. When Mr. Carbone and Ms. Crafts, Health Agent, inspected the area, they found the back door to Teatone open, so they entered the establishment and found several Health Code violations. Mr. Carbone plans on having Teatone at the next Board of Health Meeting for a Show Cause Hearing because they found a lot of the same problems still going on that were noted at an Administrative Hearing in October of 2008, such as food temperature problems and cleaning issues resulting in food being thrown out. Both restaurants have the same owners; Mootone is a Japanese restaurant, and Teatone is a Chinese restaurant. They found that Teatone had its

¹ Mr. Carbone provided the Board with a copy of the Upgrade Plan of the Subsurface Sewage Disposal System at 208 Beacon Street for the Board’s review which will be included in the Agenda Package.

hood system cleaned on schedule, but Mootone was ten months overdue. Mr. Carbone called Lt. Pomerleau from the Fire Prevention office when fire prevention problems were noted, and the Lieutenant issued some Fire Prevention tickets for both stores.

The last inspection for Teatone was in August of 2009. Inspections should be done every six months, but due to the decrease in staff, that schedule has not been able to be followed. Some of the issues Mr. Carbone found were: no sanitizer set up, eggs stored under the counter, chicken, beef and pork left defrosting at room temperature, no soap or towels at the hand wash station which was dry and dirty, and water flowing up into the vegetable prep sink from the hand wash sink through the drain. The owners hired a plumber Friday night to handle the sink problem and did a lot of cleaning overnight so they could open on Saturday. Mr. Carbone found there was a communication barrier when he asked the chef about some of the food issues. The owner's husband, who is a Certified Food Handler, came in and helped.

When Mr. Carbone and Ms. Crafts inspected Mootone, the hood was so dirty it was dripping with grease. The sushi chef didn't have a HACCP plan for the sushi rice, and had no idea how to test the sushi rice, so Mr. Carbone stopped him from using vinegar in the rice. Mr. Carbone told him that the chef had to get in touch with someone to develop a plan for him and then train his staff. The owner was out of town and was due back on Thursday from China.

Concerning the issue of rats, the dumpster is the problem. A lot of the rat nests are on property that belongs to Andover Commons, so Ms. Crafts contacted the management company, and while they were there, the pest control company from Teatone arrived. They were going to tip the Dumpster today, and Teatone was told to keep the dumpster closed, as well as to get the dumpster cleaned. As far as disposing of the garbage, Mr. Carbone had them get 5 gallon pails to dispose of the food that was removed from the restaurant, and then he denatured the food with bleach. To dispose of the denatured food, he told them to go get a regular trash barrel with a tight fitting lid and put it outside, not back into the dumpster.

Ms. Martin said that when the Board talked about maintaining the expectations of running the Health Department, she was concerned that food establishments were not being inspected every six months as required because we don't have the staff to do them. Mr. Carbone said that he and Ms. Crafts discussed the fact that the Town has never had a rat problem in all the years Ms. Crafts has worked in Andover. Now we have a rat problem in downtown as well as the train station area. Our resources have to be used where they are needed most, and we are no longer in a preventative state, we are only responding to the issues. Mr. Carbone spoke of these issues in the past – when the economy is down the businesses don't have the money to spend to upgrade equipment, they cut back on staff, and then there are fewer people to do work. Mr. Carbone said the FDA standard is one FTE food inspector for every 150 restaurants. We have on average, 150 to 160 in

Andover plus Temporary permits, but Ms. Crafts time is split among that and Medicare billing, camp, complaints, pools, etc. Ms. Martin said that at budget time instead of trying to justify what we have, we should be justifying what we should have.

B. Nurses' Report for August, 2010 –The Nurses' Report was for informational purposes only.

C. Inspectors' Reports for August, 2010 – The Inspectors' Reports were for informational purposes only.

VIII. Board Member Reports

- N/A

IX. Adjournment

Motion by Ms. Martin, seconded by Ms. Kellman, to adjourn at 7:10 p.m. Unanimous approval.